

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE A. RODRIGUEZ,

Plaintiff,

-against-

CARE DESIGN NEW YORK, ANABEL
BATISTA; IESHA GRAHAM; KAREN
GUARENTE,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/29/2021

1:19-cv-09206-GHW

ORDER OF SERVICE

GREGORY H. WOODS, United States District Judge:

Plaintiff brings this *pro se* action asserting that the defendants discriminated against him based on his age and national origin. Plaintiff has indicated that he seeks to file a claim under the Age Discrimination in Employment Act of 1967. Because Plaintiff seems to also assert that the defendants discriminated against him because of his race, the Court construes the complaint as asserting additional claims under Title VII of the Civil Rights Act of 1964 as well as claims under 42 U.S.C. § 1981. The Court further construes the complaint as asserting claims under the New York State and City Human Rights Laws. By order dated January 9, 2020, the Court granted Plaintiff's request to proceed in forma pauperis ("IFP"). Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

On April 20, 2020, Plaintiff amended his complaint. Dkt. No. 8. The Court permitted Plaintiff to effect service of that complaint through the U.S. Marshals Service. *See* Dkt No. 11. The Court did not receive a certificate of service of that amended complaint. On July 29, 2021, Plaintiff amended his complaint for the second time. Dkt. No. 15. Plaintiff is again permitted to effect service through the U.S. Marshals Service.

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); see also *Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

The U.S. Marshals are ordered to serve Plaintiff's Second Amended Complaint, Dkt. No. 15, on Defendants. The U.S. Marshals are further ordered to serve Plaintiff's First Amended Complaint, Dkt. No. 8, on Defendants, to the extent they have not already done so. *See* Dkt. No. 11. If the First Amended Complaint was previously served on Defendants, the U.S. Marshals are directed to file proof of service on the docket.


To allow Plaintiff to effect service on Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants. The Clerk of Court is further directed to mail a copy of this order to Plaintiff by certified mail.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal.

Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: July 29, 2021
New York, New York



GREGORY H. WOODS
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

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